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NEWS TELEGRAMS.

FROM WASHINGTON.

Investigations by the Retrenchment Committee---Discovery of Extensive Cotton Frauds---Articles of Impeachment Prepared, Etc.

NEW YORK, Nov. 23.—A Herald's Washington special says: The investigation which is going on by the Retrenchment Committee has developed facts which implicate parties occupying high and influential positions under the Government, in the cotton frauds. A great deal of fraud, more than was at first supposed, has been practiced upon the Government and citizens of the South, by the cotton agent. It appears that these agents were in the habit of confiscating large quantities of cotton in the name of the Government, and after it had remained in their hands a short time, they turned it over to outside parties, who sold it and divided the proceeds with the agents.

Another gang which was resorted to extensively by these men, was to release the cotton upon payment of a handsome sum.

We had a report here that prominent Radicals had a meeting in Philadelphia, on the 20th inst., at which articles of impeachment against the President were prepared. They are to be submitted to a caucus of Republican members of Congress on the Saturday prior to the meeting of Congress. The names of the parties attending the caucus in Philadelphia will be furnished in due time.

Official notice is given that the President will have no time to devote to office-seekers until after the meeting of Congress.

At a conference between the Second Comptroller and Second Auditor, in relation to bounty in cases of colored troops, it was decided proof of freedom on the 19th of April, 1861, should be no longer required, but full effect given to the law of Congress, approved June 15th, 1866, and the soldier accorded the benefit of the presumption, if the contrary did not appear upon muster rolls, and the bounty allowed, if otherwise entitled.

The Second Auditor has decided that where discharged colored soldiers have applied or may hereafter apply to his office for any arrearages of pay, not paid in final discharge, or for bounty provided by the act of July 22d, 1861, he will also allow in the settlement of such claims the additional bounty provided by the act of July 28th, 1866, if such bounty shall be found due.

The Commissioner of Indian Affairs is informed that the reports of hostility of part of the Cheyennes and Arapahoes are without foundation. The country adjacent to the Smoky Hill route is perfectly safe for travel.

FROM NEW YORK.

The Distillery Frauds---The Privateer Meteor Case, Etc.

NEW YORK, Nov. 23.—The young officers of the household of the Prince of Higsapolertuate, of the Japanesh Empire, are sojourning in this city.

The cases of Messrs. Wilson and Cochre, who were charged with implication in the recent Brooklyn distillery frauds, were before Coroner Newton, yesterday, but owing to the absence of the counsel for the accused, were adjourned until to-day.

Another distillery was seized on Wednesday, in Williamsburg, where, apparently, another shrewd scheme was going on to outwit the law. The still and distillery are kept in an unfinished condition, and the owners intimate that they will take out a license as soon as they finish repairing their establishment. The officers discovered the still in full blast, about 4 o'clock in the morning, and arrested the proprietors.

The case of the alleged privateer Meteor was up before Judge Nelson, in the U. S. Circuit Court, yesterday. In a pro firma discussion as to fixing a day for hearing the argument in the case, in connection with Judge Betts' decision condemning the vessels, the U. S. District Attorney was in favor of letting the case go at once, without argument, from the Circuit Court to the bench of the Supreme Court of the United States at Washington. This will, in all probability, be the course adopted.

FROM CANADA.

Trouble with the United States Anticipated---New Trials for Condemned Fenians Demanded.

MONTREAL, Nov. 23.—Dispatches received here by the Governor General from England state that the possibility of trouble with the United States renders increased vigilance indispensable on the part of the Canadian authorities.

TORONTO, Nov. 28.—In the Court of Common Pleas to-day, before the Chief Justice and Justices Adams and Williams, Mr. McKenzie appealed for a rule calling upon the Attorney General to show cause why the verdict should not be set aside as contrary to law and the evidence, and a new trial be had in the case of the Queen vs. Stevens, one of the Fenian prisoners at present under sentence of death in the old jail; the grounds upon which the motion was based were that the indictment charged the prisoner with two distinct offences, that of committing one act as a British subject as well as an American citizen. That alleged offences being committed in the county of Welland could not be tried in the county of York.

FROM ST. LOUIS.

The Stephens Wing of Fenians in Mass Meeting.

ST. LOUIS, Nov. 23.—The Stephens wing of Fenians were in mass meeting at their headquarters last night, and adopted resolutions re-affirming their confidence in Stephens, and condemning another movement on Canada as waste of blood and material, warning their brethren against appeals in behalf of their condemed friends, Canadian prisoners, on the ground that nothing can be done in time to save them, expressing the belief that England durst not execute sentence of the Canadian courts, but if she does, their only hope is successful retaliation, and the establishment of Irish neutrality as a prompt and energetic co-operation with their Irish brothers on Irish soil. To this end, they urge immediate reorganization, and bountiful contributions of money and arms.

BY THE CABLE.

The Great Eastern---An Austrian Loan.

LONDON, Nov. 22.—It is reported that the steamship Great Eastern will begin to make regular trips between New York and Brest early in March.

There is a rumor to the effect that an Austrian loan of several million pounds sterling will soon be placed in the market.

A Paris correspondent of the London Post says that the relations between England and the United States will soon be critical.

A large quantity of arms designed for the use of the Fenians were seized on board a Liverpool bound steamer at Cork.

FORTRESS MONROE.

Mr. Davis' Health and Spirits Much Improved.

FORTRESS MONROE, Nov. 21.—Parties who have lately visited Mr. Davis, state that they found him remarkably cheerful since the recent changes and additions made to his quarters in Carroll Hall, and the removal of Mrs. Davis and her sister to rooms prepared for them. Mr. Davis' health is much improved, and he speaks very confidently of being released. The family is visited constantly by relatives and friends from the South, and packages of presents are frequently received.

Important Paris Dispatches on Mexican Affairs.

NEW YORK, Nov. 23.—The Commercial's Washington special says the Cabinet meeting yesterday was to consider important dispatches from Paris on Mexican affairs. Dispatches were immediately forwarded to Gen. Sherman and Minister Campbell via New Orleans. It is understood that the dispatches from Paris considerably complicates the Mexican question, and may lead to the most important results.

The President will indorse in his message a plan submitted by the Secretary of the Treasury for a return to specie payment.

The Conservative Army and Navy Union, at their meeting last night, after a warm discussion, passed by a two-third vote, a series of resolutions that the proposed Constitutional Amendment ought to be rejected, and that in the judgment of this organization it is clearly the duty of the Conservative press throughout the country to appeal to the Northern and Southern States to extend suffrage to the negro on such qualified basis as may be proper and just.

Operations of a Swindler.

NEW YORK, Nov. 23.—A World's Detroit special says: It has transpired here that a prominent and old established drug house in New York has been made the victim of several just such swindles, within the past few months, as that which has been discovered in Boston. In the last swindle, or attempt upon the New York firm, the party not only bought goods in the city, but ordered further shipments at almost every point of his route to the West, thus running upa bill for thousands of dollars, which, but for the sharpness of the firm in following up the goods, would have been lost, as was thousands in other cases preceding it. The object was to get the goods sold quickly, pocket the proceeds and decamp; in other words, it was to be a second edition of the Boston game.

Another Philadelphia Sensation Report.

PHILADELPHIA, Nov. 23.—The Bulletin publishes a Washington dispatch which states that the President, after mature deliberation, has decided to abandon his opposition to Congress. He will set forth fully in his message the reasons inducing him to take this step. Letters have been addressed to leading Republican Senators and Representatives in regard to the matter.

Political Schemes of Missouri Radicals.

ST. LOUIS, Nov. 23.—The Evening News to-day says: Gov. Fletcher, Hon. B. Gratz Brown, Hon. Henry T. Blow, and other prominent Radicals, have inaugurated a movement in this city having for its object the rejection by the Legislature of the Congressional Constitutional Amendments and amendments to the State Constitution, so as to abrogate the disfranchisement of Rebels, and substitute therefor negro suffrage.

Fires.

OSWEGO, N. Y., Nov. 23.—About half-past two o'clock this morning a fire broke out in the basement of a meat store on West Seneca street, occupied by A. H. Wilcox. Eight stores were destroyed. The loss is heavy, and cannot be estimated.

OIL CITY, Pa., Nov. 23.—Shierk McFadden & Co's. refinery was destroyed by fire this morning. Loss $10,000. Partially insured.

Compensation to Loyal Slaveholders.

BALTIMORE, Nov. 23.—Secretary Stanton has appointed Col. W. H. Stewart, W. Flinn and Washington A. Miller, civil commissioners to award compensation to loyal slaveholders of Maryland, whose slaves were drafted into the army during the war. This commission is created under an act of Congress passed last session.

Distribution of Arms in Canada.

TORONTO, Nov. 23.—Seventeen thousand stand of arms, breech loaders, purchased by the government for the volunteers are now being distributed among different artillery and cavalry corps of the Province.

River and Weather.

CINCINNATI, Nov. 23.—The river has fallen eight inches. There are twenty-five feet two inches in the channel.

PITTSBURG, Nov. 23.—River six feet six inches and falling. Weather cloudy and damp.

Foreign Markets.

LIVERPOOL, Nov. 22.—The market for otton opened firmer, with the prospect of a day's sale of 13,000 bales. Prices, however, are unchanged; middling uplands, 14.

Breadstuffs are firmer; corn 38s. 9d.

LONDON, Nov. 23.—The market for money is easy, and consols are quoted at 90 for money.

The following are the opening rates for American securities: Erie, 50¼; Illinois Central, 78¼; United States 5-20s, 70¼.

THE FRANCHISE LAW.

Important Legal Document.

JUDGE COOPER'S DECISION.

The Law Declared Unconstitutional.

From the Murfreesboro Monitor, Nov. 24.]

B. F. Ridley *vs.* Freeman Sherbrooke. Mandamus.

The Court in this case finds itself called to pass upon the most important point which can possibly be submitted to a judicial tribunal. It could not arise under the English system, where Parliament is without the restraint of a written constitution, and where such constitutional provisions as are supposed to exist, rest only in the bosom of the very body which can alone announce and construe them. And in entering upon the discussion of the questions submitted to the Court in this case, it may be premised that these questions do not in the least affect the validity of the present State Government. The Court recognizes the principle that the judiciary is subordinate to the political power, and has nothing to do with its rightfulness or wrongfulness. It accepts the authority of the Government behind which it holds office as an ultimate fact behind which it cannot go. Until changed by the people, it is entitled to, and should receive our obedience. It may also be added, that in determining the grave and important questions submitted for its decision in this case, it ought not to be influenced by any considerations growing out of the policy or impolicy, the wisdom or want of wisdom, in the passage of the law brought in review. Whether it is fraught with blessings to us as a people, or comes laden with disorder, are not questions within the jurisdiction of courts of justice; such questions must be left to the decision of another forum. We have only to deal with the question, whether the law which we are called upon to decide, is in conformity with the fundamental law, which the Government has prescribed as a guide for its several departments. The very constitution itself, under which all departments act, may imperatively require the courts, to inquire and see whether one department has thus conformed its action to this constitution. And if satisfied of this fact, this Court cannot hesitate in the course it will pursue.

It is insisted by the relator in this case that, the exceptions and qualifications of the elective franchise, impaired by the act of the present General Assembly of the State of Tennessee, known as the "franchise act," are unconstitutional and void, and that although he may fall within the number or class therein specified, still it is the duty of the respondent as register of votes of the county of Rutherford, to register him as a voter, and issue to him a certificate, as required by the duties of his office, and the respondent having failed to perform said duties, this Court is applied to, in order to compel by proper process the issuance of said certificate to him. It is admitted by the pleadings, and conceded in the argument of this case, that so much of the act of assembly as creates the office of register of votes, is constitutional and valid. It is also conceded that the respondent is the legal and duly qualified officer under said act. At this point in the investigation and for the present argument, the Court accepts these admissions and concessions to be true, the Court being fully satisfied both from reason and on authority, that one part of an act of assembly may be constitutional and another part of the same act unconstitutional. The Court is also satisfied, that independent of a special grant of power in the constitution, to the Legislature to create such an office, that the Legislature possesses it, by virtue of its general powers as a Legislature. But then is any part of this act of assembly unconstitutional and therefore void? This is a question at all times one of much delicacy, and which should be weighed well before being decided in the affirmative, it should seldom if ever be so decided in a doubtful case. Whenever it is clear, and indisputably against the fundamental law, and the court is thereby impelled to so decide it, it would be unworthy of its station, could it be unmindful of the solemn obligation which that station imposes. But it is not on slight implication and mere conjecture that the Legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other. (6 Cranch, 331.)

In determining this question, we assume as a premise which cannot be controverted that, the amendment of the constitution under which this act is sought to be established and held valid, was the act of the sovereign people of the State of Tennessee, that the Legislature which passed the act, if they had not forfeited their right to be called a Legislature, were invested with full powers to carry into effect the amendment of the Constitution which had been adopted and ratified by the people. Under this assumption, the question for our determination is narrowed down to an examination as to what were the powers delegated to them in the amendments. And have they in the passage of the act referred to transcended those powers?

In the first place, suppose they have conferred upon them, all the powers which the people themselves, would have were they assembled in convention. Have the people themselves, the right or power to deny a "free white man of the age of twenty-one years, being a citizen of the United States, and a citizen of the county wherein he may offer his vote, six months next preceding the day of election," and who has not been convicted of an infamous crime, the privilege of voting? It is provided in section eight of the bill of rights "that no free man shall be disseized of his freehold, liberties or privileges; but by the judgment of his peers or the law of the land." It also provided in section 5 of the same instrument, "that elections shall be free and equal," and also in section 11, "that no *ex post facto* law shall be made." The constitution provides in section 12 of article XI, "The declaration of right hereto prefixed is declared to be a part of the constitution of this State, and shall never be violated on any pretence whatever. And to guard against transgression of the high powers we have delegated, we declare that every thing in the bill of rights contained is excepted out of the general powers of government, and shall forever remain inviolate."

Can any privilege or liberty which a man enjoyed under the Constitution be abridged or destroyed, except under the provisions of the instrument itself? When the people assemble in convention themselves, or through their delegates, are they not bound by the Constitution? or are they thrown back into anarchy, and possess the same powers which were inherent in them before government was first organized? Could they, in forming a new constitution, disseize any man from his freehold? Were they to attempt it, would they not violate the fundamental law? In a constitutional government is there any higher law than the constitution itself? Can the people themselves resume the powers which they surrendered when the Government was originally formed? What meaning, then, shall be given to the sections in the declaration of rights which we have quoted, and to Section 12 of Article XI of the Constitution? If the people themselves can denude a citizen of his rights, liberties, or privileges, in any other way than those pointed out by the Constitution, what guarantee has he for the protection of any of them? It is not insisted that a man cannot forfeit his liberties or his privileges. This may be done in ways pointed out in the Constitution itself. That instrument points out two ways: "by the judgment of his peers or by the law of the land." What is the judgment of his peers? This means by the verdict of a jury. In all cases of controverted facts he is entitled to this trial by jury. The people themselves cannot deprive a citizen of this right. What is the meaning of "law of the land?" This term has been defined by our own Supreme Court in many adjudicated cases. To make a statute a law of the land the Legislature must have had the constitutional power to pass it, and it must be a general and public law, equally binding upon every member of the community. (Sheppard *vs.* Johnson, 2 Hump. 285-298). The right to life, liberty and property of every individual must stand or fall by the same rule or law that governs every other member of the body politic or land under similar circumstances. (Vanzant *vs.* Waddel, 2 Yerg. 260-271). But it may be said that the Legislature shall have no power to pass such partial laws; but why may not the people themselves so alter the fundamental law as to permit the passage of partial laws? The answer is, that the declaration of rights is made unalterable by the Constitution itself, and that declares how a man shall be deprived of his rights, liberty and privileges, which shall be by the law of the land. The question, however, whether the right of the elective franchise is such a right or privilege as cannot be taken away from him, except in the ways suggested, is one not altogether free from difficulty. The Court is not fully satisfied but what the people can amend their organic law so as to declare who should be voters thereafter, thereby cutting off some who had been voters up to that time, without violating the declaration of rights or the provisions of the Constitution. But waiving a decision of this point, are the powers delegated to the Legislature by the amended Constitution as ample and full as those possessed by the people themselves. Let us examine and see. The 9th section of the schedule to said amendment is given as follows: "The qualifications of voters and the limitation of the elective franchise may be determined by the General Assembly which shall first assemble **under the amended Constitution.**" Does this repeal Art. IV, Section 1, of the old Constitution? It does not do so in words. Does it do so by implication? If the two can stand together, will not every rule of construction forbid that the old shall be repealed or abrogated by the new? For the new provision, to have the effect of repealing the old, must not the repeal be clear and explicit, or must it not be of such a character that the two cannot stand together. Now, to give the section quoted from the schedule of the amendments the effect to repeal Art. IV, Section I of the Constitution, it must vest in the Legislature the full power and authority to declare who shall be voters hereafter in this State. Does this mean that the repeal of all laws and constitutional provisions authorizing persons to vote, and give power to the Legislature to make such laws? What may the Legislature determine under this power? The power must be strictly construed. They have no power to amend, but to determine "under the Constitution as amended, the qualification of voters and the limitation of the elective franchise." If they can only determine under the Constitution, and are not authorized to amend the instrument itself, can they so determine as to repeal or destroy Art. I, Section 1st of the Constitution, that all power is inherent in the people? May not full scope be given to the power granted in these amendments, without a repeal of the other provisions in the Constitution touching the right to vote? What were the amendments proposed by the convention and adopted by the people?

1. That slavery and involuntary servitude, except as a punishment for crime, should be abolished.

2. The Legislature shall make no law recognizing the right of property in man.

3. Abrogating Section 31, Art. II of the Constitution.

These amendments, if ratified by the people, would emancipate a large class who had before that time been slaves. These persons would necessarily be in our midst. Was not this power we are considering given to the Legislature that they might provide for the enfranchising of these persons thus made free? And would not this afford ample scope for the exercise of the power to fix the qualification of voters? And they might desire to limit the elective franchise as to this class of persons to some intellectual or property qualification. To thus limit the power delegated to the Legislature is in accordance with fair rules of construction. Does not the context bear out this interpretation? Under what were they to exercise the power delegated? Under the amended Constitution? Did the amendments in any way refer to any other class of persons than those who were made free by them? Was it necessary that the power to determine their right to the elective franchise should rest somewhere? Was it at all necessary that the power should be given to change or alter the elective franchise as to other persons? If the convention or people had intended to give to them the power of disfranchising those already clothed with the right to vote, would they not have been more explicit in conferring the power? By thus construing the power delegated to the Legislature we are able make each and every part of the Constitution stand. Any other construction, the one has to give way to the other. The Court is therefore content to hold, that the power delegated to the Legislature by the amended Constitution does not vest them with the power to determine the qualifications of voters in all cases, but only so far as the freedmen are concerned. If the Court is correct in the determination of the foregoing proposition, then it necessarily follows that the Legislature have transcended their powers in the passage of the act under consideration, so far as they have attempted to alter the qualification to vote of those who were already voters under the old Constitution, and to that extent the act is void, and would not excuse the respondent from giving the necessary certificate to the relator.

But there is another question in the case, which I feel bound to examine. It is one which might have arisen under the constitutional government of some of our sister States, but it is no great compliment to them to say that it has never yet occurred in any of them. The demoralization of civil war and the disorganization incident to that most dangerous period immediately following, when the strong arm of the military power has been withdrawn, and the more reliable, if not stronger arm of the law has not yet resumed its sway, were required to produce the state of facts upon which such a question can alone be raised. The old landmarks are, at such a period, swept away or lost sight of, and new ones have not yet been created. Now, for the first time in the constitutional history of this country, the legislative department of the General Government and of our own State, have not been content to follow in the safe line of precedent, but have been induced from a conviction of duty, this Court is bound to presume, to resort to the Cromwellian plan of purging their own bodies of members obnoxious to the majority. If a sense of duty has compelled the two Houses of the General Assembly of the State to exclude some of the members of each, duly returned by the electors, a sense of duty equally constrains this Court to examine into the constitutionality of the act, and to ascertain whether, if unconstitutional, the fact can be noticed in this case.

The facts which raise this question are as follows:

The General Assembly of the State having certain measures before it in relation to the elective franchise, a portion of the House of Representatives, sufficient in number to reduce that body below a quorum, thought it was their duty to resign their seats in order to prevent the hasty passage of so important a measure, and to ascertain by a vote the wishes of their constituents. To fill the vacancies thus created, his Excellency the Governor of the State, as in duty bound, issued his proclamation to the proper officers directing elections to be held in the several districts according to law. These elections were accordingly held, and new members elected, among whom, however, were a number—fifteen, we believe—who had resigned their seats as aforesaid. When these members, with their certificates in due form, went to Nashville to take their seats, the House of Representatives, or, rather, those members of the House who had not resigned, and one or two members whom they selected from the new comers, refused to allow them to take their seats, but formally ejected them to the number of fifteen in the House and two in the Senate. This was confessedly done, not because there was any informality in the elections, nor in the certificates of the proper officers, nor because the applicants were not possessed of all the constitutional qualifications, free from all the constitutional disqualifications, and able and willing to comply with all the constitutional requirements, but simply because they had directly or impliedly assented to the movement which had left the House without a quorum, and thereby, in the opinion of those who refused to join in this action, had disqualified themselves from eligibility to seats in the House. This was the sole ground upon which their forcible exclusion from the body to which they had been sent by the people, was put by the dominant majority. In the Senate, about the same time, the Hon. Cave Johnson, a recently elected member to that body, was excluded upon another ground. It was not pretended that he had not been elected, duly and legally to fill the vacancy; nor was it denied that he had all the necessary qualifications, but the Senate chose to refuse him admittance because his sympathies had been with the South in the late rebellion. In both cases, that is to say, in the case of the excluded members from the House, and in the case of the excluded member from the Senate, each of those bodies chose to add to the qualifications or disqualifications made by the Constitution, others of its own framing. Was this right? If not, was the body from which they were thus wrongfully excluded any longer a constitutional General Assembly? Such are the grave points which this Court is called upon to decide.

The requirements necessary to eligibility to the General Assembly, as prescribed by the Constitution, are found in Art. II, Sections 9 and 10 of that instrument, and the Constitutional disqualifications in Sections 25 and 26, of the same article. It is not necessary to quote those sections, nor to detail their provisions, for it is not pretended that they have anything to do with the action taken by the two Houses in the cases before us. Nor is it pretended that there is anything in the amendment to the Constitution, nor in the law of the land, directly justifying the exclusion. But it is contended that each House of the General Assembly has the exclusive right to judge of the qualification of its members, and its decision cannot be revised.

The Constitution Article II, Section 11 certainly provides that: "The Senate and House of Representatives, when assembled, shall each * * * be judges of the qualification and election of its members." The Constitution must, like every other writing, be construed as a whole, not by piecemeal, (Mosely vs. State, 7 Md. 135) and when we look to it as a whole, the obvious meaning of the clause in question is that each House shall be the judge of the *constitutional qualifications* of its members, and the legality of their elections. These are questions which they may properly decide, for every member is interested in having them properly decided, the decision being equally binding upon all. To that extent each House may be admitted to be, when acting in good faith, the supreme arbiter, and its decision in a given case, although it might appear to others to be erroneous, cannot be revised. But it is altogether a different question when one of these Houses goes beyond the plain provisions of the Constitution, and undertakes to require an additional qualification, or to establish a new disqualification. In such case, each member of the House has no longer a common interest with every other, and an inducement to do right; and the House itself ceases to be a constitutional judge, and becomes a prosecutor of an individual, or an actor against the right of the electors. The people have rights as well as the two Houses. They have the exclusive right to judge of the qualification of the members whom they chose to send to the General Assembly, subject only to the provisions of the Constitution. The religious faith, the moral character, the intellectual qualifications of the members are for the people, not the Legislature. This point was solemnly decided after years of struggle, by the Parliament of Great Britain, in the famous case of John Wilkes. That notorious person was guilty not only of libel on the King, one of the co-ordinate powers of the British Government, but upon morality. In 1768 he was returned as a member of Parliament from the county of Middlesex without opposition, but the House declared him incapable of sitting. Three other elections took place with the same result, and, at last, the House declared Colonel Luttrell, Wilkes' opponent, elected, though he had received only three hundred votes in the thousand cast, on the ground that the votes for Wilkes were void from his incapacity to serve. This measure aroused intense indignation throughout the country. The contest between Wilkes and the Ministry became a contest for the preservation of the rights of the people. But in 1782, when passion had subsided and sober reason once more prevailed, the House voted that the resolution by which Wilkes had been declared incapable of being re-elected, should be expunged, "it being subversive of the rights of the whole body of electors in the Kingdom."

"It would seem but fair reasoning," says Judge Story (Com. an const., s. 625), "upon the planest principles of interpretation, that when the Constitution established certain qualifications as necessary for office, it meant to exclude all others as prerevuisites. From the very nature of such a provision the affirmation of these qualifications would seem to imply a negative of all others. A power to add new qualifications is certainly equivalent to a power to vary them. It adds to the aggregate what changes the nature of former requisites." The dominant majority might require the member to be of a certain religious faith, or to belong to a particular trade or calling, or to possess a specific mental, moral or property qualification, "In short," to again use Judge Story's language (S. 624), there is no end to the variety of qualifications which, without insisting upon extravagant cases, may be imagined." Under the reasonable qualifications established by the Constituton, the door of this part of the Government, as was remarked by the Federalist, No. 52, in relation to the Federal Constitution, is open to merit of every description; whether native or adopted, whether young or old, and without regard to poverty or wealth, or any particular profession of religious faith. But with an unlimited right in each House to add to these qualifications, there is no telling to what extravagant lengths the spirit of faction may induce a dominant majority to go for the purpose of stifling popular will and retaining power. As well, it seems to us, might each House establish a Procrustean bed for the regulation of the physical organization of its members as to lay down rules of mental, moral or political conduct. It is enough to say that the Constitution fixes the qualifications, leaving the people the free and unrestrained choice of their Representatives in all other respects, and to refuse to admit such Representatives, when duly elected, is to strike at the fundamental principles of our republican institutions. My opinion, therefore, clearly is that neither House of the General Assembly had any authority, under the Constitution or laws of the land, for the exclusion of the several members as above detailed. What then was the effect of such unlawful exclusion?

"The legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives, *both dependent on the people.*" (Const., Art. 2, Sec. 3.) To carry out this provision, the Constitution then provides—Section 4—for a decennial enumeration of the qualified voters, and an apportionment of the Representatives in the General Assembly. It then provides that the number of said Representatives shall, at the several periods of making the enumeration, be apportioned among the several counties or districts according to the number of qualified voters in each, not to exceed a certain number, and with an express proviso, "that any county having two-thirds of the ratio shall be entitled to one member." In like manner the number of Senators shall, at the several periods of making the enumeration, be apportioned among the several counties or districts according to the number of qualified electors in each, not to exceed one-third of the number of Representatives, and with the express proviso: "In apportioning the Senators among the different counties, the fraction that may be lost by any county or counties, in the apportionment of the members of the House of Representatives, shall be made up to such county or counties in the Senate as near as may be practicable." The provisions leave no doubt that the framers of our Constitution intended that the General Assembly should be composed of Representatives elected by the people from the several counties and districts all over the State. They have sedulously provided for the representation of fractions of counties either in the House or Senate. They could not have shown more explicitly their deliberate intention that the General Assembly should represent the whole people upon whom it is dependent. It was never intended that a part of the State might be alone represented, or that a dominant majority might exclude a minority for any

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